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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

JAN 26 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

_____)	
In the Matter of)	CC Docket No. 96-45
)	[DA 98-2]
Federal-State Joint Board on)	
Universal Service)	(Report to Congress)
_____)	

COMMENTS OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS
FOR THE REPORT TO CONGRESS ON UNIVERSAL SERVICE

Pursuant to Sections 1.49, 1.415, and 1.419 of the Federal Communications Commission's ("FCC" or "Commission") Rules of Practice and Procedure, 47 C.F.R. §§ 1.49, 1.415, and 1.419 (1997), the National Association of Regulatory Utility Commissioners ("NARUC")¹ respectfully submits these comments addressing the FCC Common Carrier Bureau's January 5, 1998 Public Notice DA 98-2 titled "*Common Carrier Bureau Seeks Comment for Report to Congress on Universal Service Under the Telecommunications Act of 1996*" released in the above-captioned proceeding.

¹NARUC is a quasi-governmental nonprofit organization founded in 1889. Members include governmental regulatory agencies in all fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands. NARUC's State and territorial members are charged with the duty of regulating the communications common carriers operating within their respective borders. These officials have the obligation to assure that communications services and facilities required by the public convenience and necessity are established and that service is furnished at just and reasonable rates. State and Federal statutes require NARUC's members to actively participate in local and national proceedings designed to foment policy that supports universal service.

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The Common Carrier Bureau (“CCB” or “Bureau”) notice requests comment on five specific issues in connection with the Report to Congress on Universal Service required in Congress’ 1998 appropriations legislation. The CCB report will provide Congress with a detailed description of the extent to which the FCC’s interpretations in specifically designated areas are consistent with the plain language of the Telecommunications Act of 1996.²

All five CCB issue statements posed for comment focus on FCC interpretations of the universal service provisions found in § 254 of the new legislation. As Congress recognized in that section by requiring a Federal State Joint Board, virtually every issue raised in this CC Docket 96-45 proceeding will have a significant impact on intrastate operations and local rates of carriers subject to NARUC’s State commission membership. *Significantly, at least one of the issues raised in the CCB notice – the diversion of federal universal service funds to reduce interstate access charges – was never presented to or considered by the Joint Board.*

One critical consideration that overshadows all five issue statements is the continued need for Federal and State policy makers to take a coordinated approach to successfully address the concept of Universal Service. Protecting this Nation’s long-standing commitment to universal access to affordable basic service during the transition to competition remains one of the most critical challenges facing federal and state regulators.

²Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. §§ 151 *et. seq.*) (“1996 Act” or “Act”) The 1998 appropriations legislation specifically requires the FCC to review its implementation of the Act’s universal service provisions and “provide a detailed description of the extent to which the Commission’s interpretations in the following areas are consistent with the plain language” of the Act. The notice identifies the following five focus areas: (1) definitions, (2) application of those definitions, (3) contributors, (4) recipients of support, and (5) percentage of support provided by the federal mechanism.

NARUC has consistently contended that States and the FCC must continue to take a coordinated and comprehensive approach to Universal Service issues.³ The passage of the 1996 Act has only intensified the need for Federal and State coordination and cooperation. *NARUC remains committed to a cooperative process among State and Federal regulators in the implementation of the 1996 Act, and recognizes the importance of the universal service proceeding in resolving the significant challenges that remain.*

Indeed, since passage of the Act, NARUC as an organization has continued to focus significant resources on universal service issues, passing more than six additional policy resolutions addressing a range of universal service concerns.

Because of the short time provided for comment, the following NARUC responses to the issue statements posed by the CCB in the public notice are necessarily limited to previous positions taken in those resolutions. NARUC has not adopted a specific policy position on the issues raised by the CCB's first three issue statements. Accordingly, we are unable to comment

³For example, past resolutions specifically (a) suggest States and the FCC should work cooperatively to develop Universal Service criteria and standards [February 28, 1996 *Resolution Regarding the NARUC Policy Principles for the Implementation of the "Telecommunications Act of 1996"*]; (b) ask how "policy makers can best coordinate efforts in developing and implementing US policies, to ensure nationwide implementation while minimizing overlap...of subsidies" and "endorses[e] the use of a collaborative process with the FCC...to address and refine the concept of and issues relating to [US];" [November 11, 1993 *Resolution on Recent Initiatives to Consider Universal Service Policies*]; (c) consistently support "a comprehensive review of the concept of universal service and issues related to the continuation and expansion of universal service;" *Id.*; (d) "recommend...the...Joint Board, FCC and Congress...examin[e] all sorts of methods of supporting [US] including but not limited to appropriate taxation of new entrants in the telecommunications and information marketplace, completely revamping the separations/cost allocations processes in order to make implicit subsidies explicit, or any other system that would be more harmonious with a competitive market structure;" [July 27, 1994 *Resolution to Consider Taxation as a Means of Supporting Universal Service*]; (e) urge the FCC to establish an NOI to seek comment concerning the issues raised by the March 1993 Access Issues Work Group Report; [March 4, 1993 *Resolution Requesting the [FCC] to Initiate an Inquiry into Access Issues*]; and (f) recommend six basic principles for STATES to consider when they engage in policy making with respect to universal service issues. [July 27, 1994 *Resolution On Universal Service Principles*].

on those at this time.⁴

NARUC RESPONSES TO THE CCB ISSUE STATEMENTS

CCB Issue 4: Who is eligible under §254(e), 254(h)(1), and 254(h)(2) to receive specific federal universal service support for the provision of universal service, and the consistency with which the FCC has interpreted each of those provisions of § 254.

NARUC Response: There are two problems associated with “eligibility” as interpreted by the FCC’s existing orders: (1) The inappropriate diversion of high cost funding from making basic phone service more affordable to reducing the cost of interstate long distance calls; and (2) the overly prescriptive interpretation of §214(e).

- **Current FCC orders inappropriately divert high cost funding to reduce interstate access charges rather than continue contributions designed to keep basic telecommunications rates low.**

The FCC has carefully defined a set of basic *intrastate* telecommunications services as “universal service” under the Act.⁵ While *interstate* toll services are mentioned, restriction or blocking of such *interstate* services is permitted and even mandated by the FCC in some circumstances as a strategy for promoting universal service. NARUC submits that the FCC-

⁴**CCB Issue 1:** The definitions of “information service,” “local exchange carrier,” “telecommunications,” “telecommunications service,” “telecommunications carrier,” and “telephone exchange service” in § 3, and the impact of the interpretation of those definitions on the provision of universal service to consumers in all areas of the Nation. **CCB Issue 2:** The application of those definitions to mixed or hybrid services and the impact of such application on universal service, and the consistency of the Commission’s application of those definitions, including with respect to Internet access for educational providers, libraries, and rural health care providers under § 254(h) of the Act. **CCB Issue 3:** Who is required to contribute to universal service under § 254(d) of the Act and related existing Federal support mechanisms, and of any exemption of providers or exclusion of any service that includes telecommunications from such requirement or support mechanisms.

⁵*In the Matter of Federal-State Joint Board on Universal Service*, “First Report and Order”, CC Docket No. 96-45, FCC 97-157 (rel. May 8, 1997), (“*Universal Service Order*”), at 8807, ¶ 56.

defined *intrastate* services clearly represent the type of services that Congress targeted for high cost support in the Act.

However, the FCC has determined that all universal service support in high cost areas must be used to reduce the interstate access charges paid by interexchange carriers.⁶

NARUC respectfully suggests that in so doing, the FCC has subverted Congress's intent that it take action to achieve affordable basic local telephone service in the subject high cost areas.

Indeed, in two separate resolutions passed at NARUC's November 1997 Annual Convention,⁷ the organization expressed its continued opposition to the Commission's plan to channel the benefit of universal service support to interstate access charge rate reductions. The plan to offset universal service support by interstate access reductions radically revises the current support mechanism that is focused on ensuring affordable rates for basic local services.

NARUC believes the FCC's approach is inconsistent with the Act's requirements (1) for Federal

⁶In its May 16, 1997 "First Report and Order", in the proceeding captioned *In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges*, FCC 97-158, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, at ¶ 381, ("Access Order"), the FCC states: "Consistent with our decision in the Universal Service Order to fund only interstate costs through the federal universal service fund, we direct incumbent LECs to use any...support received from the new universal service mechanisms to reduce or satisfy the interstate revenue requirement otherwise collected through interstate access charges." The subsequent October 7, 1997, Notice of Proposed Rulemaking, *In the Matter of Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, reiterates in ¶ 100 that: "Consistent with the Universal Service Order, federal support received by ILECs for service to rural, insular, and high cost areas would be directly assigned to the interstate jurisdiction because it is only intended to support the federal share of the costs of providing high cost service, and because such support is intended to offset ILECs' interstate revenue requirement." The *Access Order* was appealed to the 8th Circuit U. S. Court of Appeals in *Southwestern Bell Telephone Co. v. FCC*, Case No. 97-2618. The FCC's allocation of Universal Service Funds to reduce interstate access charges has been raised in that appeal.

⁷See, *Resolution to Support Alternatives to the Federal High Cost Support Mechanism Announced by the FCC in its May 8, 1997 Universal Service Order* (November 12, 1997), which specifically supports the principle that "that the purpose of Federal high cost funding is to preserve affordable local rates" and NARUC's *Resolution Regarding Implementation of Universal Service High Cost Funding*, (November 12, 1997), which (1) recognizes the diversion of high cost funds suggested by three FCC orders, (2)"expresses . . . concern that the FCC's interstate USF plan does not sufficiently benefit local ratepayers," (3) " . . . supports the use of the Federal portion of the Universal

fund support to maintain affordable rates in “rural, insular and high cost areas” and (2) limiting the use of such funds to the “provision, maintenance, and upgrading of facilities and services for which the support is intended.” 47 U.S.C. §§ 254(b)(4), 254(e).

➤ **The *Universal Service Order* includes an overly prescriptive interpretation of §214(e).**

Although NARUC did not seek reconsideration of the FCC’s May 8 Universal Service Order, nor pass a resolution addressing this aspect of the FCC’s order, a significant number of NARUC member States expressed concern over the FCC’s overly prescriptive interpretation of § 214(e).⁸

Section 214(e) specifically delegates authority to State commissions for the designation of eligible telecommunications carriers. The *Universal Service Order*, however offers an extensive discussion of its view of the meaning of “owned” facilities, an issue which the State commissions are clearly given authority to decide.

Section 214(e)(5) defines a service area for non-rural carriers to be “a geographic area established by a *State commission* for the purpose of determining universal service obligations and support mechanisms.” However, the *Universal Service Order*, at ¶ 184, specifically circumscribes this clear delegation of discretion to States by concluding that “service areas should be sufficiently small to ensure accurate targeting of high cost support and to encourage entry by competitors.”

Service Support Fund exclusively to maintain affordable rates in high cost areas.”

⁸See, 47 U.S.C. § 214(e) (1996). In the *Universal Service Order*, at ¶ 134, the FCC adopts the §214(e)(1) statutory criteria as the rules for determining whether a carrier is eligible to receive universal service support. The order goes on to conclude in ¶ 135, that §214(e)(2) does not permit the Commission or the States to adopt additional criteria for designation as an eligible carrier. Later, the order concludes, in ¶¶ 161-69, that a carrier that offers any of the services designated for universal service support, either in whole or in part, over facilities that are obtained as

Whether these FCC pronouncements are correct policy choices is not the issue. The question is whether in making these pronouncements, the FCC exceeded the role that Congress assigned to it. It appears that, at least in these two instances, the FCC should revise the language and conclusions of its orders to more accurately reflect the requirements of the Act.

CCB Issue 5: The Commission's decisions regarding the percentage of universal service support provided by federal mechanisms and the revenue base from which such support is derived.

NARUC Response: Both of the following sub-issues raised in this issue statement are of intense interest to NARUC and its member commissions:

- The 75-25% State-Federal High Cost Funding split proposed by the FCC after the Joint Board's recommendation; and
- The need to assure, whatever the revenue base used for funding, that States are able to continue intrastate universal service programs.

The historical availability of Federal universal service funding through the FCC's separations rules has allowed local exchange telephone companies to provide intrastate service to high-cost rural areas at affordable rates. Intrastate rates have been established by State regulators based on the carriers' revenue requirements that include a recognition of the revenues derived from the Federal Universal Service Fund.

Both the anticipated source of revenues for this program and the *Universal Service Order's* novel proposal to set a 75 percent State and 25 percent Federal split of jurisdictional responsibility for recovery of the High Cost Fund generated much discussion among NARUC's

membership.

As to the revenue base for Federal Universal Service funding, NARUC's July 1996 "**Universal Service Resolution**" suggests *only* that "...the funds and the mechanisms necessary to support the federal universal service requirements, as defined consistent with the Act, must be funded only through the contributions of providers of interstate telecommunications services."

With respect to the FCC's proposal to fund only 25% of the calculated Federal Universal Service high cost requirement, in November, 1997, NARUC adopted another policy statement supporting the past and continued effort of an ad-hoc working group. That group - the Ad Hoc High Cost Fund Working Group - includes a diverse array of State parties and is involved in an ongoing effort to develop a plan for support of high cost and rural areas that differs from the 75-25% proposal suggested in the FCC's *Universal Service Order*.

While not specifically endorsing any specific funding proposal, NARUC in the resolution, did support the six principles identified in the November 3, 1997, white paper produced by that working group, as a basis for future action. Those principles follow:

- The purpose of Federal high cost funding is to preserve affordable local rates,
- Consumers in rural, insular and high cost areas should have access to a similar spectrum of services as consumers in urban areas, and should have those services available at rates that are reasonably comparable to rates charged for similar services in urban areas,
- Federal support should be cost-based,
- Federal support must be compatible with the Federal rules for jurisdictional separation of costs and revenues,
- The distribution of Federal support for high cost areas should afford maximum respect to the separation of jurisdictions between the Federal and State governments and in particular the duty of State commissions to set rates for intrastate telecommunications services, and

- Collection and distribution of high cost support should be competitively neutral.

The resolution also suggested that this working group plan, its supporting principles, and its analysis be “brought to the attention of the FCC, Congress, the Section 254 Federal-State Joint Board, and to other groups, individuals, or organizations.”

All of NARUC’s members have concerns with either the proposed funding sources or other aspects of the FCC’s current plan for supporting high cost areas. However, the organization and its members remain very interested in participating in further discussions with the Commission, Congress, and other stakeholder groups to resolve the challenges that remain in implementing the Act’s universal service vision.

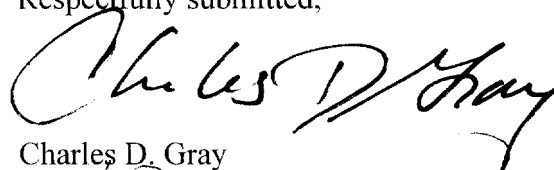
CONCLUSION

The Commission's interpretations implementing many subparts of the universal service provisions of the Act *were* consistent with the Congressional intent and the statutory language. NARUC supports those decisions. However, as discussed above, the FCC did misinterpret several provisions that are of particular concern to States.

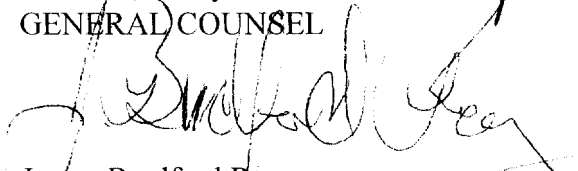
Four new FCC commissioners have been appointed since the release of the orders discussed in these comments. Discussions with these new Commissioners are underway and NARUC remains optimistic that the newly constituted Commission will take steps to address many of our concerns. NARUC pledges to continue to work with all five commissioners and the Commission staff to meet the challenges that remain and also to effect the changes to the existing policies needed to carry out Congress's intent and the express terms of the statute.

Accordingly, NARUC respectfully requests that the FCC (1) carefully consider revising its orders to conform to the positions outlined in this pleading and (2) incorporate NARUC's concerns in its Report to Congress and the record in this proceeding.

Respectfully submitted,



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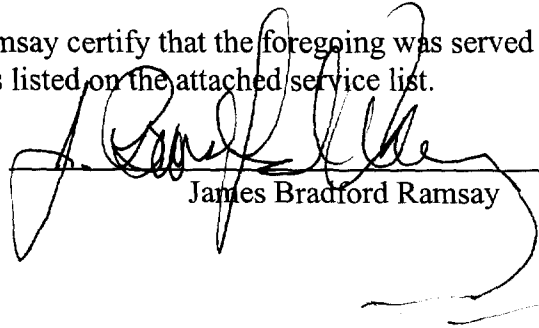
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James Bradford Ramsay